



Town of Tyngsborough
Zoning Board of Appeals
Town Hall-25 Bryants Lane
Tyngsborough, MA 01879-1003
(978) 649-2300, Ext. 115

TYNGSBOROUGH ZONING BOARD OF APPEALS MINUTES

November 14, 2013

APPROVED

Attachments:

1. Meeting Agenda
2. 30 Progress Ave. ZBA Application – 10/10/13
3. Department Comments for 30 Progress Ave.
4. 257 Middlesex Rd. ZBA Application – 10/16/13
5. Department Comments for 257 Middlesex Rd.
6. Norse Design Services letter regarding 257 Middlesex Rd. – 11/8/13
7. ZBA letter regarding Villages of Maple Ridge Homeowners Concerns – 10/23/13
8. Maple Ridge Real Estate Development Corp. response letter – 11/14/13
9. PSC, Inc. Maple Ridge Status Report – 11/13/13
10. Tyngsborough Highway Dept. Maple Ridge letter – 11/5/13
11. Tyngsborough Conservation Commission Maple Ridge letter – 11/14/13
12. Tyngsborough Building Dept. Maple Ridge letter – 11/14/13
13. Maple Ridge Final Construction Plans Sheet Numbers 35,36,37,38
14. Maple Ridge Homeowners Association roadway pictures submitted 11/14/13
15. Maple Ridge Real Estate Development Corp. plan rendering of modified cape cod berm detail from Sheet 35 of the approved construction plans

Members Present: Claire Cloutier, Chairman
Robb Kydd, Vice Chairman
Joe Polin
Scott Bordeleau
Chris Mechalides
Cheryl Bradley

6:30pm Meeting was called to order by Chairman C. Cloutier

Public Hearing #1

S. Bordeleau sat out of this hearing.

30 Progress Ave. (M13, P39, L0) – Request for a Variance from the requirements of Section 2.12.50 (Front Yard Setback) of the Tyngsborough Zoning By-Law to construct a 90' x 110' industrial building in an I-1 Zone. *Advertised in the Lowell Sun Thursday October 31, 2013 and Thursday November 7, 2013*

Abutters List Present and Complete

R. Kydd: Motion to waive the reading of the abutters list.

J. Polin: 2nd the motion

In Favor: 5 Opposed: 0

Passed: 5-0

Application Presentation by Applicant/Designee

Atty. Kevin Eriksen and engineer Doug Lees appeared before the Board for the applicant, Logan Realty Trust and Logan Realty, LLC. Atty. Eriksen pointed out that this project is located on the vacant corner lot adjacent to 30 Progress Ave. The Tyngsborough Assessor's office issued a comment that delineates the lot as Map 13, Parcel 42, Lot 0 with a street address of 4 Trader Circle. Therefore, this project will be referred to as 4 Trader Circle in any decision rendered by the Board.

Atty. Eriksen explained that his client is looking to build a commercial building that would possibly be used as Service Bays or Contractor Bays. The unique corner configuration of the lot in essence has two "front yards", 101' on Progress Ave. and 41' on Trader Circle. Zoning requires 100 ft. on both Progress Ave. and Trader Circle; therefore, a variance is being requested for the Trader Circle portion as it does not meet the setback requirement of 100ft.

Engineer Doug Lees noted the topographical and lot shape hardships that restrict the area where a building could be placed; therefore, creating a financial hardship as applying two front yard setbacks to the property would limit the building location and available footprint. He went on to say that a site plan review would be required from the Planning Board as well as a stormwater permit from Conservation. In addition, the new building will be connected to the existing sewer line which services the area. There were no abutters present to speak for or against this project.

R. Kydd: Motion to close the public portion of the hearing.

J. Polin: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Open Discussion by the Board and Q&A to Applicant with Applicant responses

The Board felt that with the unique corner location of the lot, the hardship was proven.

Review Notes/Comments on Application from other Tyngsborough Departments

Conservation: Applicant will be required to file with Conservation for a local Stormwater Permit.

Tax Collector: None

Assessor: The new building will be on Map 13, Parcel 42, Lot 0, not Map 13, Parcel 39, Lot 0. Map 13, Parcel 42, Lot 0 is identified as 4 Trader Circle, based on proposed plan, access now will be by Progress Ave., prompting a change in address.

Board of Health: None

Sewer Dept.: Connection to sewer is available. What will the use of the building be?

Building Inspector: None

Highway Dept.: None

Planning Board: None

Fire Dept.: None

J. Polin: Motion to Approve; Assessors Map 13, Parcel 42, Lot 0 (4 Trader Circle) a Variance from the requirements of the Zoning By-Laws for front yard setback in an I-1 Zone, from the required 100Ft. to 41ft. to construct a 90' x 110' building as shown on the Certified Preliminary Site Plan dated 10/2/13.

C. Mechalides: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Public Hearing #2

C. Mechalides sat out of this hearing.

257 Middlesex Rd. (M20, P47, L0) – Request for a Variance from the requirements of Section 2.12.50 (Front & Side Yard Setbacks), and a Special Permit under Section 2.15.22 for the installation of new underground storage tanks and the construction of a canopy over the gas pump island in a B-3 Zone. *Advertised in the Lowell Sun Thursday October 31, 2013 and Thursday November 7, 2013*

Abutters List Present and Complete

R. Kydd: Motion to waive the reading of the abutters list.

S. Bordeleau: 2nd the motion

In Favor: 5 Opposed: 0

Passed: 5-0

Application Presentation by Applicant/Designee

Atty. Peter Nicosia appeared before the Board for the applicant Route 3A Gas, Inc. & Tyngsborough Realty Trust. Atty. Nicosia explained that this project would encompass a much needed renovation of an existing gas station that would include new underground storage gas tanks, and a new gas pump island with a canopy over the pumps. The property was re-zoned to a B-3 district in 2012. The applicant is seeking the following variances:

- Front Yard Setback – 74.5 ft. for the gas pump canopy
- Front Yard Setback – 63ft. for the underground storage gas tanks
- Side Yard Setback – 5 ft. for the gas pump canopy
- Side yard Setback – 18 ft. for the underground storage gas tanks

Atty. Nicosia went on to say this is a pre-existing business and the unusual site conditions being so close to Middlesex Rd. lend to the hardship. The State has been notified regarding this project as it impacts Middlesex Rd. which is a State road. There were no abutters present to speak for or against this project.

The Board voiced several concerns with the proposed canopy over the gas pumps, including canopy lighting and signage, and the distance of the pump island from Middlesex Rd. J. Polin noted that the State may have jurisdiction over this project due to the close proximity of the project to the State highway. Atty. Nicosia reiterated that this is a pre-existing non-conforming lot; however, the project will not increase the non-conformity

The Board discussed their problems with the gas pump island canopy noting lighting and signage and the size and close proximity of the canopy to Middlesex Rd. R. Kydd added that the site could use the improvements; however, the visual impact of the canopy is significant and may be detrimental to the neighborhood. J. Polin added his concerns with the location of the gas pump canopy, lighting and water run-off from the canopy.

Atty. Nicosia offered to withdraw without prejudice the variance relief and special permit requested for the gas pump canopy in order for the State to render their opinion and to work on design specifications.

J. Polin: Motion to accept a request to withdraw without prejudice a request for a variance and special permit for the construction of a canopy over the gas pump island.

R. Kydd: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Review Notes/Comments on Application from other Tyngsborough Departments

Planning Board: Steps should be taken to prevent stormwater runoff from entering Middlesex Rd. What are the signage and lighting designs, and do they fit within the Tyngsborough Master Plan?

Board of Health: The leach field and septic tanks shall be fenced off with orange fencing during construction to prohibit heavy equipment. Excavation for the proposed storage tanks should not be within 15ft. of the existing septic tank.

Tax Collector: FY' 2013 3rd and 4th quarter real estate taxes are past due (due 10/24/13). FY' 2014 1st quarter real estate taxes are past due (due 10/24/13).

Sewer Dept.: No existing sewer available.

Conservation: None

Fire Dept.: None

Building Inspector: None

Highway Dept.: None

Assessor: None

Open Discussion by the Board and Q&A to Applicant with Applicant responses

The Board asked for explanations relative to the department comments. Atty. Nicosia acknowledged the Board of Health's request, stating that the excavation and placement of the storage tanks would adhere to the Board of Health requirements. Regarding the Planning Board's comments regarding stormwater runoff, project engineer Jeff Hannaford issued a response that clarified that all of the proposed work would be conducted on current impervious surfaces and existing grading would not change once construction is completed. Atty. Nicosia acknowledged the real estate tax concerns and said that the owner would take care of it. Finally, since the proposed canopy was withdrawn from this application, the lighting and signage concerns are moot.

R. Kydd: Motion to close the public portion of the hearing.

J. Polin: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

J. Polin: Motion to approve a Variance from the requirements of Section 2.12.50 of the Zoning By-Laws for front yard setback in a B-3 Zone, from the required 75ft. to 12ft., and side yard setback in a B-3 Zone, from the required 30ft. to 12ft. for the installation of underground storage gas tanks as shown on the Certified Proposed site Plan dated 10/15/13.

C. Bradley: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

J. Polin: Motion to approve a Special Permit under Section 12.15.22 to remove existing underground storage gas tanks and install new underground storage gas tanks as shown on the Certified Proposed Site Plan dated 10/15/13.

C. Bradley: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

DISCUSSION

Villages of Maple Ridge Roadway Specifications/Completion Update – Ed Wallace

Maple Ridge Homeowners Association representatives Atty. Ed Wallace of 17 Steinbeck St., Harvey Miller of 21 Steinbeck St., and Marty Schecter of 5 Dickens Rd. appeared before the Board to follow-up on their previously discussed concerns regarding the condition of the roads throughout the development which are summarized below:

- Berms have been ruined by the heavy equipment
- Berms don't appear to meet the approved specifications
- Oil traps have not been installed in the catch basins
- Lights on Dickens Lane have not been installed
- Driveways were done poorly or aren't done at all
- There are Conservation concerns (no details were provided)
- Binder coat is in poor shape
- Emergency egress at the end of Steinbeck St. going into Potash Hill Rd. is blocked with heavy equipment
- Catch basins are filled with junk (debris) and not draining well

The Board issued a detailed report to Mr. Eriksen dated 10/23/13 with the homeowners' concerns. In addition, they requested comments from the Building Dept., Conservation Commission, Highway Dept., Fire Dept., and the Board's engineering consultant (PSC, Corp.).

Developer Walter Eriksen and Atty. Scott Eriksen responded in a letter dated 11/14/13, and also addressed the Board regarding the issues. There was significant discussion between all parties which resulted in the following actions items:

- Mr. Eriksen will check into the street lights on Dickens Lane and install at least 1 light within the next 60 days.
- Mr. Eriksen confirmed that the berms have been constructed per approved specifications as indicated on sheet 35 of the approved final construction plans. Any deficiencies in the condition of the berms will be repaired and inspected by ZBA engineer PSC prior to the installation of the finish coat. Mr. Eriksen went on to estimate that the repairs would be made in April of 2014 and the finish coat would be installed in May 2014.
- Mr. Eriksen said that oil traps were not required per the final plans; however, he agreed to install them in December 2013.

ZBA engineers PSC inspected the project and issued a report that details the remaining project deficiencies and estimated that the cost to complete them would be \$327,450. In addition, comments from town departments indicate that there are no problems. It should be noted that the Fire Dept. did not indicate any safety issues with the emergency egress at the end of Steinbeck Street. In fact, the chain that is currently in place was requested by the Fire Dept. in lieu of a large metal gate.

Finally, a resident from 17 Dickens Lane insisted that the complaints brought forward by Mr. Wallace do not represent the entire Maple Ridge development.

ADMINISTRATIVE

C. Mechalides: Motion to approve the minutes as written from October 10, 2013

R. Kydd: 2nd the motion

In Favor: 4 Opposed: 0 Abstain: 2

Passes: 4-0-2

Next meeting is scheduled for December 12, 2013

8:20pm

C. Cloutier: Motion to adjourn

J. Polin: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Minutes respectfully submitted by
Pamela Berman, ZBA Administrative Assistant